



THOMAS L. WELCH  
CHAIRMAN

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION  
18 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0018

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January 9, 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

Re: CC Docket No. 96-45 FEDERAL-STATE JOINT BOARD ON  
UNIVERSAL SERVICE

Dear Mr. Caton:

Enclosed are an Original and ten copies of the Reply Comments of the Maine  
Public Utilities Commission and the Vermont Service Board.

Sincerely,

Joel Shifman

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of

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Federal-State Joint Board on  
Universal Service

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CC Docket No. 96-45

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Reply Comments of the

The State of Maine Public Utilities Commission

The State of Vermont Public Service Board

Joel B. Shifman, Esq.  
Maine Public Utilities Commission  
242 State Street, 18 State House Station  
Augusta, Maine 04333-0018

Peter M. Bluhm, Esq.  
Vermont Public Service Board  
Drawer 20  
Montpelier, Vermont 05620-2701

Date: January 9, 1997

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
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Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service )

Reply Comments of the  
Maine Public Utilities Commission

The Maine Public Utilities Commission (MPUC) appreciates the opportunity to file reply comments in response to the November 18, 1996, Public Notice (DA 96-1891) concerning the Recommended Decision of the Joint Board in this docket.

In their initial comments in this docket, some commenters (USTA p.17, Rural Coalition p.31) may be suggesting that the intrastate jurisdictional nature of a portion of the costs incurred to provide universal service narrows the legal responsibility under section 254(b) of the Act for the Joint Board and the Commission to provide adequate funds so that quality service can be available in the nation's rural areas at rates that are just, reasonable, affordable, and comparable with those charged in urban areas. Furthermore, some commenters and the Joint Board appear to be drawing a connection between the size and sufficiency of the fund and the manner by which money needed to finance the fund is recovered from carriers.

It is our position that the statutory duties required under section 254(b) are a Federal responsibility regardless of the jurisdictional nature of the costs. Furthermore, the size of the "fund" and "sufficiency" considerations cannot depend on whether or not intrastate revenues are used as a basis for determining carrier contributions.

Notwithstanding these positions, we do not believe it would be unlawful for the Commission to use the total revenue of interstate carriers as the basis for funding the Federal universal service fund. Rather than restate the comments we made to the Joint Board regarding these issues, we have attached to these reply comments the relevant portions of those comments for the Commission's consideration.

Respectfully submitted,

For the  
MAINE PUBLIC UTILITIES COMMISSION



Joel B. Shifman, Esq.  
Maine Public Utilities Commission  
242 State Street, 18 State House Station  
Augusta, Maine 04333-0018

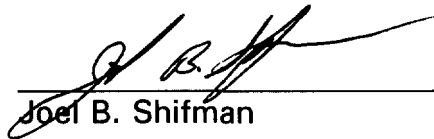
For the  
VERMONT PUBLIC SERVICE BOARD



Peter M. Bluhm, Esq.  
Vermont Public Service Board  
Drawer 20  
Montpelier, Vermont 05620-2701

### Certificate of Service

I, Joel B. Shifman, hereby certify that on this 9th day of January, 1997, copies of the foregoing reply comments of the State of Maine Public Utilities Commission and the State of Vermont Public Service Board in the above docket were served by first class mail, postage prepaid, to the parties listed on the attached service list.



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Joel B. Shifman

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

FCC 96-93

In the Matter of	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	

**COMMENTS OF:**

**THE STATE OF MAINE PUBLIC UTILITIES COMMISSION,  
THE STATE OF MONTANA PUBLIC SERVICE COMMISSION,  
THE STATE OF NEBRASKA PUBLIC SERVICE COMMISSION,  
THE STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION,  
THE STATE OF NEW MEXICO STATE CORPORATION COMMISSION,  
THE STATE OF UTAH PUBLIC SERVICE COMMISSION,  
THE STATE OF VERMONT DEPARTMENT OF PUBLIC SERVICE AND  
PUBLIC SERVICE BOARD, AND  
THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA**

Joel B. Shifman, Esq.  
Maine Public Utilities Commission  
242 State Street, State House Station No. 18  
Augusta, Maine 04333-0018

Karen Finstad Hammel, Esq.  
Montana Public Service Commission  
1701 Prospect Avenue  
Post Office Box 202601  
Helena, Montana 59620-2601

Commissioner Rod Johnson, Chairman  
Nebraska Public Service Commission  
300 The Atrium, 1200 N Street  
Post Office Box 94927  
Lincoln, Nebraska 68509-4927

Kathryn M. Bailey  
New Hampshire Public Utilities Commission  
8 Old Suncook Road  
Concord, New Hampshire 03301-7319

David Kaufman, Esq.  
New Mexico State Corporation Commission  
Post Office Box 1269  
Santa Fe, New Mexico 87504-1269

David L. Stott, Esq.  
160 East 300 South  
Post Office Box 45585  
Salt Lake City, Utah 84145

James Volz, Esq.  
Vermont Department of Public Service  
Drawer 20  
Montpelier, Vermont 05620-2601

Peter M. Bluhm, Esq.  
Vermont Public Service Board  
Drawer 20  
Montpelier, Vermont 05620-2701

Steven Hamula, Esq.  
Public Service Commission of West Virginia  
201 Brooks Street  
Post Office Box 812  
Charleston, West Virginia 25323

## SUMMARY

The Telecommunications Act of 1996 imposes an extraordinary burden on the Commission, to ensure that rates are reasonably comparable between rural, insular and high cost areas on the one hand and urban areas on the other. This statutory goal will not be met if the Commission fails to establish a high cost funding mechanism that is adequately funded. That system must also be targeted accurately to high cost areas. It should be based on reported costs of carriers, not on rates, since rates are extremely difficult to compare accurately and proxy models are not yet sufficiently mature to serve as a basis for distributing funds. In distributing funds, the Commission should avoid using any criteria that do not drive cost, such as the size of a company or the size of its study area. Although local rate measurement is necessarily too inexact to serve as a basis for fund distributions, the Commission should nevertheless seek data on rates and develop a mechanism for comparing rates.

State universal service programs are authorized under the 1996 Act, but the federal program should be sufficient to permit states to support supplemental programs and services. In establishing a definition of services supported by universal service funds, the Commission should balance the desire to support advanced services against any size limits it perceives for the funding system.

If the Commission desires to increase the subscriber line charge, it should do so only if it transfers responsibility for paying that charge from customers, who now perceive it as a local service charge, to interexchange carriers, who use the local loop as a part of their business. This interpretation will restore the separations principles established by the United States Supreme Court in *Smith v. Illinois Bell Telephone Company*.

The Commission should finance universal service programs by fairly collecting revenues from all service providers. "Net revenue" should be the preferred method to raise revenue because it is competitively neutral. Finally, Vermont's experience with a neutral administrator suggests that model could work at the federal level.



## COMMENTS

### The Commenting States

The Commenting States are statutorily responsible for establishing just and reasonable rates, charges and practices for public utilities within their jurisdictions. They therefore are "State commission(s)" within the meaning of the Telecommunications Act of 1996.<sup>1</sup> The eight Commenting States are Maine, Montana, Nebraska, New Hampshire, New Mexico, Utah, Vermont, and West Virginia. They hereby submit their comments on the Commission's Notice of Proposed Rulemaking and Order Establishing Joint Board.

### Rural, Insular and High Cost Areas - The Statutory Standard

Section 254(b) prescribes seven principles for guidance in designing policies for the preservation and advancement of universal service. Principle (3), states, in part, that:

Consumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. (emphasis added).

This principle must be acknowledged when determining the overall level and structure of universal service assistance.

These seven principles provide much more detailed guidance to the Commission on the goals for universal service than was available under the 1934 Act.

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<sup>1</sup> *E.g.* 1996 Act, Sec. 101(a), §§ 251(e), 252(b).

### Adequacy of Assistance to Rural, Insular and High Cost Areas

Universal service funding provided by the Commission to support high cost areas must be adequate to meet the new and ambitious statutory objectives found in the 1996 Act.<sup>2</sup> If the new system does not distribute sufficient funds to the state based upon a nondiscriminatory cost analysis, then "reasonably comparable" rates will simply not be possible, no matter how well designed the mechanisms to distribute assistance. Whatever mechanism the Commission selects to distribute assistance, it must provide adequate funding as well.

Adequate funding may require significantly greater federal assistance than existing programs.<sup>3</sup> At present, there is little or no difference between rural and urban rates in many study areas. This condition is not due to federal efforts, but exists because states have established rate designs that impose average rates on both high cost and low cost areas. These rate designs amount to implicit transfers by the states, and have the effect of supporting universal service. As competition matures across the country, states will find increasing difficulty in maintaining average rates. To the extent that states permit de-averaging of rates, the transfers that are now implicit in existing rate

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<sup>2</sup> Act of 1996, Sec. 101(a), §254(b)(3). The NPRM suggests that the Commission is aware of this increase in scope of the program. NPRM, paragraph 14, footnote 39. Previously, assistance to high cost areas was intended to "ensure that telephone rates are within the means of the average subscriber in all areas of the country." *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, 96 FCC2d 781, 795 (1984).

<sup>3</sup> One way to estimate the scale of the problem is to estimate the additional revenue needed to eliminate the dichotomy between large and small companies under the existing mechanism. If all local exchange carriers had been given assistance under the "small company" formula in 1994, the cost of the fund would have been approximately \$1.33 billion, rather than the \$0.77 billion actually distributed. If the Commission should also decide to merge the high cost fund with the DEM weighting program, the net cost increase might be smaller, since in many cases the carriers that receive significant DEM benefits do not have high loop costs.

designs must be converted into explicit transfers under the direction of the Commission's universal service mechanisms.

Increased funding may conflict with the historical desire of the Commission to limit the growth of its existing High Cost Fund.<sup>4</sup> However, these concerns were expressed before the 1996 Law was enacted. Since the 1996 Act gives the Commission new ways to raise universal service monies,<sup>5</sup> the Commission's concern may have been lessened.

The 1996 Act authorizes state universal service programs,<sup>6</sup> but it also delegates to the Commission the principal responsibility to ensure that national universal service objectives, including reasonably comparable rates between urban and rural areas, are met. Nothing in the law suggests that the federal responsibility to ensure that rates are "reasonably comparable" is conditional upon state participation, nor upon a state paying a "share" of the cost. Thus the Commission must design universal service mechanisms, based upon federal funding, that will be capable of avoiding non-comparable rates in rural, insular and high costs areas. The Commission should not suppose that State funds will be required in order to achieve this basic purpose.

As the Commission undertakes to design a new system, it will face the prospect of a much larger program than in the past. Yet it must resist the temptation to set an arbitrary upper limit on

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<sup>4</sup> For example, in Docket 80-286, *In re Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, the Commission issued a Notice of Proposed Rulemaking and Notice of Inquiry, FCC 95-282, released July 13, 1995. That notice proposed several measures to limit expenditures under the existing high cost assistance program, including establishing a "cap" on the size of the fund. ¶¶ 47-50.

<sup>5</sup> The Commission is considering, for example, carrier contributions as a percentage of revenues, net of payments to other carriers. NPRM, paragraph 123. A similar proportional charge, net of wholesale transactions, has been successfully used to support Vermont's Universal Service Fund, thereby replacing a per-access line charge.

<sup>6</sup> 1996 Act, Sec. 101(a), §254(f).

the funding that will be needed to achieve the statutory purpose. Certainly any high cost assistance program should provide incentives for efficient operation by service providers, and no funds should be raised that are not needed. However, the converse is equally true; all funds needed to meet the statutory objectives must be raised and distributed.

#### Targeting of Assistance to Rural, Insular and High Cost Areas

Paragraph 27 of the NPRM seeks comment on how to calculate the payments needed to support universal and affordable service in rural, insular, and high-cost areas. The most important aspect of such a mechanism is that it effectively targets those geographical areas with the greatest need. The Commission must seek those criteria that will most effectively achieve the statutory goal and it should not use criteria that are irrelevant to or detract from achieving the goal.

#### High Cost Funds Should be Directed by Costs, Not Rates; Rates May be Used As An Indicator of Success in Managing Costs

Although "reasonably comparable rates" is a statutory objective of the 1996 Act, the mechanism designed by the Commission should not rely upon local rates as inputs into the calculation. As explained below, there are too many variables used in setting local rates, and too many different rate structures for rate comparisons to become a meaningful basis upon which to calculate assistance.<sup>7</sup> Rather, while consumer rates should be monitored, they should be used only as an indicator of overall program effectiveness.

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<sup>7</sup> There may be additional reasons to avoid using consumer rates as a direct input into the formula for assistance to rural and high cost areas. For example, such a system might give inappropriate incentives to state commissions in setting rates.

James Casserly  
Federal Communications Commission  
Office of Commissioner Ness  
1919 M Street, Room 832  
Washington, D.C. 20554

John Clark  
Federal Communications Commission  
2100 M Street, Room 8619  
Washington, D.C. 20554

Bryan Clopton  
Federal Communications Commission  
2100 M Street, N.W., Room 8615  
Washington, D.C. 20554

Irene Flannery  
Federal Communications Commission  
2100 M street, N.W., Room 8922  
Washington, D.C. 20554

Daniel Gonzalez  
Federal Communications Commission  
Office of Commissioner Chong  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Emily Hoffnar  
Federal Communications Commission  
2100 M Street, N.W., Room 8918  
Washington, D.C. 20554

L. Charles Keller  
Federal Communications Commission  
2100 M Street, N.W., Room 8623  
Washington, D.C. 20554

David Krech  
Federal Communications Commission  
2025 M Street, N.W., Room 7130  
Washington, D.C. 20554

Diane Law  
Federal Communications Commission  
2100 M Street, N.W., Room 8920  
Washington, D.C. 20554

Robert Loube  
Federal Communications Commission  
2100 M Street, N.W., Room 8914  
Washington, D.C. 20554

Tejal Mehta  
Federal Communications Commission  
2100 M Street, N.W., Room 8625  
Washington, D.C. 20554

John Morabito  
Deputy Division Chief,  
Accounting and Audits  
Federal Communications Commission  
2000 L Street, N.W., Suite 812  
Washington, D.C. 20554

John Nakahata  
Federal Communications Commission  
Office of the Chairman  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Kimberly Parker  
Federal Communications Commission  
2100 M Street, N.W., Room 8609  
Washington, D.C. 20554

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814-0101  
Washington, D.C. 20554

The Honorable Rachelle B. Chong  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 844-0105  
Washington, D.C. 20554

The Honorable Laska Schoenfelder  
Commissioner  
South Dakota Public Utilities  
Commission  
State Capitol  
500 East Capitol Street  
Pierre, South Dakota 57501-5070

Paul Pederson  
State Staff Chair  
Missouri Public Service Commission  
P.O. Box 360  
Truman State Office Building  
Jefferson City, Missouri 65102

The Honorable Kenneth McClure  
Vice Chairman  
Missouri Public Service commission  
301 W. High Street, Suite 530  
Jefferson City, MO 65102

Charles Bolle  
South Dakota Public Utilities  
Commission  
State Capitol, 500 E. Capital Avenue  
Pierre, South Dakota 57501-5070

Lorraine Kenyon  
Alaska Public Utilities Commission  
1016 West Sixth Avenue, Suite 400  
Anchorage, AK 99501

The Honorable Susan Ness  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 832-0104  
Washington, D.C. 20554

The Honorable Sharon L. Nelson Chairman  
Washington Utilities & Transportation Commission  
Chandler Plaza Building  
1300 South Evergreen Park Drive, S.W.  
Olympia, WA 98504-7250

The Honorable Julia Johnson  
Commissioner  
Florida Public Service commission  
Capital Circle Office Center  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Samuel Loudenslager  
Arkansas Public Service Commission  
1000 Center Street  
P.O. Box C-400  
Little Rock Arkansas 72203-0400

Martha S. Hogerty  
Public Counsel for the State of Missouri  
P.O. Box 7800  
Harry S. Truman Building, Room 250  
Jefferson City, MO 65102

Mark Nadel  
Federal Communications Commission  
1919 M Street, N.W., Room 542  
Washington, D.C. 20554

Debra M. Kriete  
Pennsylvania Public Utilities Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Mark Long  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Gerald Gunter Building  
Tallahassee, FL 32399-0850

Sandra Makeeff  
Iowa Utilities Board  
Lucas State Office Building  
Des Moines, IA 50319

Philip F. McClelland  
Pennsylvania Office of Consumer  
Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Michael A. McRae  
D.C. Office of the People's  
Counsel  
1133 15th Street, N.W., Suite 500  
Washington, D.C. 20005

Terry Monroe  
New York Public Service Commission  
Three Empire Plaza  
Albany, NY 12223

Lee Palagyi  
Washington Utilities and Transportation  
Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

Jeanine Poltronieri  
Federal Communications Commission  
2000 L Street, N.W., Suite 257-1600E2  
Washington, D.C. 20554

James Bradford Ramsay  
National Association of Regulatory  
Utility Commissioners  
1201 Constitution Avenue, N.W.  
Washington, D.C. 20423

Brian Roberts  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

Gary Seigel  
Federal Communications Commission  
2000 L Street, N.W., Suite 812  
Washington, D.C. 20036

Pamela Szymczak  
Federal Communications Commission  
2000 L Street, N.W., Suite 257  
Washington, D.C. 20036

International Transcription Service  
2100 M Street, N.W.  
Suite 140  
Washington, D.C. 20037

Lisa Boehley  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Deonne Bruning  
Nebraska Public Service Commission  
300 The Atrium  
1200 N Street,  
P.O. Box 94927  
Lincoln, NE 68509-4927

**Barry Payne**  
Indiana Office of the Consumer Counsel  
100 North Senate Avenue, Room N501  
Indianapolis, IN 46204-2208

**Richard Smith**  
Federal Communications Commission  
2100 M Street, N.W., Room 8605  
Washington, D.C. 20554

**Lori Wright**  
Federal Communications Commission  
2100 M Street, N.W., Room 8603  
Washington, D.C. 20554

**Sheryl Todd (disk& 1 copy)**  
Common Carrier Bureau  
Federal Communications Commission  
2100 M Street, N.W., Room 8611  
Washington, D.C. 20554